

awarded to the said plaintiff, and that the defendant restore and deliver up, to her, the real and personal estate of which she was the owner, or to which she had title at the time of her marriage with the said defendant, and of which the said defendant is now in possession, or which may be under his control, to be held and enjoyed by her, separately, and in the same right, and by the same title as said property was held and enjoyed by her prior to her intermarriage with the said defendant. And it is further adjudged, ordered and decreed, that the money deposited in court, to the credit of this cause, be paid to the said plaintiff, to be held and received by her, as she would have held, received and enjoyed the same, if she had been sole and unmarried at the time the said money was recovered or paid, as stated in the proceedings in this cause. And it is further adjudged, ordered and decreed, that the defendant pay to the plaintiff the costs of this suit, to be taxed by the Register, but for the reasons stated the prayer for alimony is overruled.

BRICE T. B. WORTHINGTON for Complainant.
A. RANDALL for Defendant.

CHARLES R. DUVALL
vs.
HENRY MYERS.

} JULY TERM, 1850.

[SPECIFIC EXECUTION OF CONTRACTS—MUTUALITY—PART PERFORMANCE.]

It is a conceded principle, that the jurisdiction of a court of equity, to decree the specific execution of contracts, is not a matter of right in the parties, and to be demanded *ex debito justitiae*; but applications invoking this power of the court, are addressed to its sound and reasonable discretion, and are granted or rejected according to the circumstances of each case.

The court must be satisfied that the contract sought to be enforced, is fair and just and reasonable, and equal in all its parts; and it is now established, that unless there is to be found in the contract the essential ingredient of mutuality, a court of equity will not compel its specific execution.

The right to a specific execution of a contract, so far as the question of mutuality is concerned, depends upon whether the agreement itself is obligatory upon both parties, so that upon the application of either, against the other, the court would coerce a specific performance.